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June 22, 2011

*Plaintiff shall
respond via ECF by
5:00 p.m. on June 24,
2011.*

VIA ECF

Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

SO ORDERED

/s/
Roanne L. Mann
U.S. Magistrate Judge
Dated: 6/22/11

Re: Kosher Sports, Inc. v. Queens Ballpark Co., LLC (Index No. 10-2618)

Dear Judge Mann:

As counsel for defendant Queens Ballpark Company, LLC ("QBC") in the above-referenced matter, we submit this motion, pursuant to Local Rule 37.3, for sanctions for plaintiff Kosher Sports, Inc.'s ("KSI") spoliation of evidence and intentional destruction of additional surreptitiously recorded conversations between KSI and third-party Aramark Sports and Entertainment Services, LLC ("Aramark"), *which were disclosed for the first time* at Mr. Katz's continued deposition, that took place on Monday, June 20, 2011.

Notwithstanding the pending motion for sanctions against KSI and its counsel owing to their failure to disclose the existence of covert recordings of conversations between KSI and representatives of Aramark, KSI has, yet again, demonstrated its complete disregard for this Court and its discovery obligations under the Federal Rules by (i) continuously misleading this Court and QBC as to the existence of recordings; and (ii) admittedly destroying recordings of KSI's communications with Aramark that were made leading up to the 2010 Season — which are directly relevant to the core issues in this case — when the prospect of litigation between KSI and QBC was entirely foreseeable.

The Court can not allow such continuing and blatant violations of KSI's discovery obligations to go unanswered and must issue an order for sanctions dismissing KSI's claims, with prejudice, in their entirety or, in the alternative, grant an adverse inference that the destroyed recordings contain information that would support QBC's defenses and counterclaims in this action. Additionally, the Court should order KSI to pay QBC's expenses, including attorney's fees for this motion, incurred as a result of KSI's spoliation of evidence.

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